In the Supreme Court of the United States

No. 78-.....78-1227

ELLIS NATIONAL BANK OF TALLAHASSEE,
Petitioner,

vs.

PERRY L. DAVIS and BURMA L. DAVIS, his wife,
Respondents.

ON PETITION FOR CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, FIRST DISTRICT

SUPPLEMENT TO PETITION FOR CERTIORARI

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ARGUMENT

This Supplement to Petition for Certiorari is filed by the Petitioner, Ellis National Bank of Tallahassee, pursuant to Rule 24(5) of the Supreme Court Rules to bring to the Court's attention a decision of the Supreme Court of Florida rendered on February 1, 1979, while the original Petition for Certiorari herein was being printed, and which

Petitioner feels bears directly on the questions to be decided by the Court. The case is *Cesary* v. *The Second National Bank of North Miami,* Case No. 53,497, decided February 1, 1979.

The facts of the case basically are as follows:

Ann Cesary borrowed $8,800.44 from The Second National Bank of North Miami evidenced by a promissory note dated March 29, 1972, which on its face provided for an interest rate of eleven percent (11%) per annum. Subsequently she brought an action against the Bank on behalf of herself and all other borrowers who had borrowed from the bank sums less than $500,000.00 at an interest rate in excess of ten percent (10%) per annum. A copy of her complaint is attached hereto as Exhibit "A". A copy of the promissory Note executed by her and dated March 29, 1972, is attached hereto as Exhibit "B". An Amendment to the Complaint dated May 14, 1975, is attached hereto as Exhibit "C". The Bank filed its Answer and Affirmative Defenses, a copy of which is attached as Exhibit "D" and the Plaintiff then filed Avoidance of Affirmative Defense, a copy of which is attached as Exhibit "E".

The United States District Court for the Southern District of Florida, on October 22, 1975, entered its Order Determining Constitutionality of Statute and Denying Maintenance of Class Action, a copy of which is attached hereto as Exhibit "F".

After several proceedings in the Court, the District Court for the Southern District of Florida, on December 22, 1975, entered its Order of Summary Judgment, a copy of which is attached as Exhibit "G". The Court's holding in granting Summary Judgment in favor of the Bank was as follows:

"Under Florida Statute §656.16(1), Morris Plan Banks and Industrial Savings Banks have the right to lend money upon the security of co-makers, personal chattels or other property and '. . . to take, receive, reserve and charge for such loans or discounts made or upon any notes, bills of exchange or other evidences of indebtedness, a discount not to exceed eight percent per annum upon the total amount of the loan from the date thereof until the maturity of the final installment, notwithstanding that the principal amount of such loan is required to be repaid in installments, plus an additional charge not to exceed two percent of the principal amount of any loan, which additional charge shall be for investigating the character of the individual applying for the loan, the securities submitted and all the costs in connection with the making of such loans, all of which charges and discounts may be collected at the time the loan is made.'

It should be noted that the discount method of computing interest rates as provided under Chapter 656 of the Florida Statutes for Industrial Savings Banks will allow for a slightly higher annual percentage rate for a given simple interest rate than will the add-on interest method of computation. However, even if we take eight percent add-on interest as being the maximum allowable under the Industrial Savings Bank Act, given the five-year term of the Cesary loan, this yields a corresponding annual percentage rate of 14.13 percent even without reference to the additional charge not to exceed two percent of the principal amount of the loan for credit investigation as permitted under Florida Statute §656.17(1).

Since the annual percentage rate of the Cesary loan, as reflected on the face of plaintiff's Exhibit 'A', is only 11.00 percent, it is evident that the interest rate charged to Cesary was well within the allowable eight percent discount rate provided for under the Industrial Savings Bank Act. Indeed, the simple interest rate for a five-year period corresponding to the 11.00 percent annual percentage rate charged to Cesary would be 6.09 percent. That is, to arrive at the 11.00 percent annual percentage rate, Cesary was charged only 6.09 percent add-on interest. This is obviously below the allowable eight percent discount rate.

Accordingly, the interest rate charged to Cesary by the defendant was not usurious under the laws of the State of Florida, which laws are made applicable to national banks under 12 U.S.C. §85, supplemented by Ruling 7.7310 of the United States Comptroller of the Currency. In accordance with such ruling are the cases of Northway Lanes v. Hackley Union National Bank and Trust Company, 334 F. Supp. 723 (W.D. Mich. 1971), aff'd 464 F. 2d 855 (6th Cir. 1972) and Commissioner of Small Loans v. First National Bank, 300 A. 2d 685 (Court of Appeals, Maryland, 1973).

For these reasons, the Court finds that the loan to plaintiff by the Second National Bank of North Miami is not usurious, and further finds that judgment should be entered in favor of defendant as a matter of law. It is, then,

ORDERED and ADJUDGED that summary judgment be and the same hereby is entered in favor of defendant and against plaintiff, who takes nothing, and this cause is hereby DISMISSED.

DONE and ORDERED at Miami, Florida, this 22nd day of December, 1975."

On December 31, 1975, the District Court for the Southern District entered its Order denying cross-motion for Summary Judgment or alternative relief, and denying Motion for New Trial or Rehearing, a copy of which is attached hereto as Exhibit "H".

The Plaintiff then took an appeal to the United States Court of Appeals for the Fifth Circuit and the Fifth Circuit certified two questions to the Supreme Court of Florida. The Supreme Court of Florida rendered its decision on the certified questions by Opinion dated February 1, 1979, a copy of which is attached as Exhibit "I".

Petitioner submits that under the decision of the Supreme Court of Florida, as applied to the decision of the United States District Court for the Southern District of Florida, the Bank in the case at bar could have charged an interest rate as high as 14.13 percent without committing the offense of usury and that, therefore, there was no usury in the case at bar, since it is uncontroverted that only three payments on the loan in question to Mr. Davis carried interest at a rate in excess of ten percent, and those payments carried interest at the rate of ten percent times 365 over 360, as the result of the use of the Rowlett's Tables, or a simple interest rate of 10.139 percent. In the *Cesary* case, the stated interest rate on the face of the note, attached hereto as Exhibit "B", was 11 percent and the United States District Court for the Southern District of Florida held that that rate was not usurious as a matter of law and entered Summary Judgment for the Bank.

CONCLUSION

Throughout the proceedings in the Courts below, the Petitioner operated on the assumption that it was limited to a rate of ten percent (10%). The decision of the Southern District of Florida (Exhibit "G"), coupled with the decision of the Supreme Court of Florida of February 1, 1979 (Exhibit "I"), drastically change the underlying substantive law of the State of Florida, under which the loan in the case at bar *was not usurious,* regardless of the use of the 360-day year.

Based on the original Petition and this Supplement, Petitioner respectfully urges the Court to grant Petition for Certiorari and to order briefs and oral arguments on the merits herein.

Respectfully submitted,

/s/ JULIUS F. PARKER, JR.
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(904) 222-3730
Attorneys for Petitioner, Ellis National Bank of Tallahassee

CERTIFICATE OF SERVICE

I, JULIUS F. PARKER, JR., attorney for Ellis National Bank of Tallahassee, a National Banking corporation, Petitioner herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 14th day of February, 1979, I served copies of the foregoing Supplement to Petition for Certiorari on the several parties thereto as follows:

On Perry L. Davis and Burma L. Davis, his wife, by mailing a copy in a duly addressed envelope, with first class postage prepaid, to their attorneys of record as follows:

Charles L. Franson, Esquire
Bryant, Dickens, Franson and Miller
P. O. Box 5774
Jacksonville, Florida 32207

/s/ JULIUS F. PARKER, JR.
MADIGAN, PARKER, GATLIN, SWEDMARK & SKELDING
P. O. Box 669—318 North Monroe Street
Tallahassee, Florida 32302
(904) 222-3730

APPENDIX

EXHIBIT "A"

IN THE UNITED STATES DISTRICT COURT IN AND FOR THE SOUTHERN DISTRICT OF FLORIDA MIAMI DIVISION

No. 75-654-CIV-WM

ANN M. CESARY, a/k/a ANN M. JOHNSON, individually and for all others similarly situated,
Plaintiff,

vs.

THE SECOND NATIONAL BANK OF NORTH MIAMI, a United States banking corporation,
Defendant.

INDIVIDUAL AND CLASS ACTION COMPLAINT FOR DEBT AND RECOVERY OF USURIOUS INTEREST AGAINST A NATIONAL BANK

COMES NOW ANN M. CESARY, a/k/a ANN M. JOHNSON, Plaintiff in this cause, by and through her counsel undersigned, and sues THE SECOND NATIONAL BANK OF NORTH MIAMI, a United States Banking corporation, Defendant, and as and for her Complaint alleges the matters and things set forth in each of the following numbered paragraphs:

1) Plaintiff is a resident of Dade County Florida and is sui juris. The Defendant, SECOND NATIONAL BANK

OF NORTH MIAMI, is a banking corporation organized under the laws of the United States whose banking house and place of business is in Dade County, Florida.

2) Jurisdiction in this Court arises, as will appear below, under the provisions of Title 28, United States Code, §1355 and also under the provisions of Title 28, United States Code, §1337. This action arises under the provisions of Title 12, United States Code, §85 and §86.

3) On March 29, 1972, your Plaintiff borrowed from the Defendant Bank the sum of $8,800.44 which was evidenced by the installment promissory note, a copy of which is attached hereto as Plaintiff's Exhibit A and which was secured by a mortgage deed recorded in the Public Records of Dade County, Florida, in OR 7692, at Page 295, Public Records of Dade County, copy attached hereto as Plaintiff's Exhibit B, both of which Exhibits are incorporated herein by reference as if fully set out and made a part hereof.

4) Plaintiff, from time to time, made payments on the promissory note as required by the terms thereof and has made interest payments on the said note within the two year period last past the date of filing of this action.

5) The aforesaid note on its face provides for an annual rate of interest of 11% per annum. Under the provisions of Title 12, United States Code, §86, the Bank is entitled to receive interest at a maximum rate allowed by the laws of the State of Florida, which is the state where the Bank is located, or, at a rate of 1% in excess of the discount rate on ninety (90) day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve District where the bank is located, whichever may be the greater and no more.

6) Under the laws of the State of Florida, the maximum interest which was allowable and is allowable for

a loan made to an individual is 10% per annum as provided by Florida Statute 687.02 and 687.03. The discount rate of the Federal Reserve Bank of Atlanta in March, 1972, was 4.1% per annum.

7) The loan made to your Plaintiff being in excess of $5,000 does not come within the interest rate exception permitted to state banks by Florida Statute 659.18 and assimilated to national banks by Title 12, United States Code, §85. In like manner, since the loan does not exceed $500,000, it does not come within the exception as to interest provided by Chapter 74-232, Laws of Florida 1974.

8) The loan contemplated by the Exhibits to this Complaint is patently usurious and under the provisions of Title 12, United States Code, §86, your Plaintiff is entitled to a declaration that the entire interest which the note carries with it is forfeit and, in addition, is entitled to Judgment in an action of debt in the amount of twice the amount of interest actually paid to the Defendant Bank and is further entitled to have an accounting taken as to the amounts paid on interest and principal under the loan and to have the amount of her penalty fixed and determined by this Court.

9) Plaintiff believes, that upon the taking of such accounting, it will be determined that the entire principal amount due to the Bank has been repaid and that she is entitled to a Judgment for double the amount of interest paid, together with such interest, costs and attorney's fees as may be allowable or provided by law, and further to a Judgment declaring the said mortgage, Exhibit B hereto, to be satisfied and to a Judgment requiring the satisfaction of the said mortgage of record by the Defendant and the return to the Plaintiff of all evidences of her debt.

10) In addition, to suing in her individual capacity, your Plaintiff sues as the member of a class and as a representative party on behalf of that class and alleges:

a) She is a member of a definable and delimitable class of persons, to-wit: those individuals who have borrowed more than $5,000 and less than $500,000 from the Defendant Bank and who have paid interest thereon within a period of two years last past the date of filing of this action where interest has been charged by the Bank on such loans in excess of 10% per annum.

b) The class is so numerous that joinder of all members is impracticable, your Plaintiff alleging that it appears that there may be as many as 1,000 members of the said class, the exact number of the members to be defined upon further proceedings in this cause.

c) The question of law and fact respecting the usurious nature of the transaction is common to all members of the class and the members of the class as debtors have a united and single interest as against the Bank in recovering the usurious interest extracted from them by the Bank.

d) The claims of your Plaintiff are typical of the claims of the class.

e) Your Plaintiff will fairly and adequately protect the interest of the class.

f) The Defendant Bank has refused to act on grounds generally applicable to the class by refusing to recognize the usurious character of the transaction thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

g) This Court should find that the questions of law or fact common to the members of the class predominate over any questions effecting only individual members and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. This is particularly true in light of the fact that the Bank is continuing to collect interest on these usurious contracts and to demand that interest from their borrowers and the Statute of Limitations rolls on every day insulating the Bank from the legitimate claims of their debtors for the recovery of their unlawful and usurious interest payments.

11) Your Plaintiff has retained the services of MILTON FELLER, SHALLE STEPHEN FINE and STEVEN BROWNSTEIN to act as her attorneys in this cause, both individually and on behalf of the class which she represents and they are entitled to reasonable attorney's fees for their services to her and for their services to the class from any recovery and corpus created as a result of this lawsuit.

WHEREFORE, your Plaintiff prays that this Court will:

1) Take jurisdiction of this action and of the parties hereto; and

2) Adjudicate this action as a class action; and

3) After notice and hearing, take an accounting of the payments and interest paid by your Plaintiff and by all other members of the class she represents; and

4) Adjudicate the amount of interest penalty to be recovered by your Plaintiff under the provisions of Title 12, United States Code, §85 and 86 and like manner adjudicate the amount to be recovered by the other members of the class which she represents; and

5) Enter its Final Judgment awarding to your Plaintiff and to the members of the class which she represents their due with respect to the interest and penalty which they are entitled to recover and also adjudicate and award to the Plaintiff for herself and on behalf of the class such reasonable attorney's fees, costs and interest as may be provided by law; and

6) Declare Plaintiff's rights with respect to the collateral security furnished to the Defendant Bank and in like manner declare the rights of the other members of the class with respect to collateral securities furnished by them and require the disposition of those securities in accordance with right and justice; and

7) Grant such other further and general relief as may be meet and proper in the circumstances.

* * *

EXHIBIT "B"

PROMISSORY NOTE – INSTALLMENT

North Miami, Florida March 29, 19 72

$1,832.00

For value received the undersigned (and if more than one, each of them jointly and severally), hereinafter called "Maker," promises to pay to the order of

The Second National Bank of North Miami

hereinafter called "Bank" at its banking house in North Miami, Florida, the sum of Eleven Thousand Eight Hundred Thirty-Two and no/100 DOLLARS (TOTAL OF PAYMENTS) in 60 monthly installments of $197.20 each, on the 25th day of each successive month commencing on April 25, 19 72, and will pay late charges not to exceed 5¢ of the amount of any principal payment or payments in default. All payments made hereunder shall be credited first to interest and lawful charges then accrued and the remainder to principal. The amount of this note includes $ proceeds of $ 8,800.44 plus other charges (Describe) Ea Ins. $250.00- D.S. $17.65/- $25.00 $14.00 resulting in an AMOUNT FINANCED of $ 9,082.29) plus a FINANCE CHARGE of $ 2,749.71 (which amount includes interest of $ 2,724.69 credit life insurance premium of $ see above and loan fee cost of $ 25.02 and credit investigation cost of $) resulting in an ANNUAL PERCENTAGE RATE of 11.00.

In the event the Maker shall prepay this loan, which right is hereby granted, or in the event the payment of this loan shall be accelerated by the Bank for default by the Maker, or for any other reason, the Maker shall obtain a refund of the unearned portion of the finance charge computed under the "Rule of 78's" method.

PHYSICAL DAMAGE INSURANCE. If written in connection with this transaction, may be obtained by Customers through any duly licensed Insurance Agent or Broker of his choice, subject only to Creditor's right to refuse to accept any insurer offered by Customers, for reasonable cause. If such insurance is procured by Creditor(s), with insurance premiums therefore financed as part of Credit Sale, the cost will be $ for the term of the Credit Sale obligation, based upon current rates and representations of Customers as to use of Collateral, their Record and Classification.

CREDIT LIFE AND/OR DISABILITY INSURANCE are not required for credit purchase of said through Creditor (s) being voluntary on Customers' part. No such Credit Insurance is provided unless the Customer to be insured under such Credit Insurance Policies signs the appropriate Statement below.

(a.) The Premium (Cost) for Credit Life Insurance will be $ 250.00 for the term of the credit. -$5,000.00 - 5 yrs.

(b.) The Premium (Cost) for Credit Life & Disability Insurance will be $, for the term of the credit.

I DESIRE CREDIT LIFE AND DISABILITY INSURANCE:

(SEAL)

(Date) (Signature of Customer)

I DESIRE CREDIT LIFE INSURANCE ONLY:

3/29/72

(Date)

(SEAL)

(Signature of Customer)

EXHIBIT "C"

[Title Omitted]

AMENDMENT TO COMPLAINT

COMES NOW ANN M. CESARY, a/k/a ANN M. JOHNSON, by and through her counsel undersigned and amends her Complaint previously filed in this cause in the following respects:

1. She amends Paragraph 10(a) by striking the said paragraph and substituting therefore the following paragraph:

(a) She is a member of a definable and delimitable class of persons, to-wit: "Those individuals who have borrowed less than $500,000.00 from the Defendant Bank and who have paid interest thereon within a period of two (2) years last past the date of filing of this action where interest has been charged by the Bank on such loans in excess of 10 per cent per annum".

DATED this 14th day of May, 1975.

* * *

EXHIBIT "D"

[Title Omitted]

ANSWER AND AFFIRMATIVE DEFENSES

THE SECOND NATIONAL BANK OF NORTH MIAMI, defendant in this cause, for Answer to the plaintiff's Complaint and by way of Affirmative Defenses thereto, says:

FIRST DEFENSE

The Complaint fails to state a claim against defendant upon which relief can be granted.

SECOND DEFENSE

(A) Defendant admits the allegations of paragraphs 1, 2 and 4 of the plaintiff's Complaint.

(B) Defendant admits so much of paragraph 3 of the plaintiff's Complaint as states that the plaintiff borrowed a sum of money from the defendant Bank, and denies the remaining allegations of paragraph 3, except to state that as "additional collateral," the indebtedness was secured by a mortgage deed, but that the primary collateral is reflected on the face of Exhibit A being a security agreement on a 1965 Vagabond mobile home to include all furniture and appliances, as well as a 1968 Thunderbird automobile.

(C) Defendant admits so much of the allegations of paragraph 7 of the plaintiff's Complaint as states that the loan is in excess of $5000.00 and does not exceed $500,000.00, but denies the remaining allegations of paragraph 7.

(D) Defendant denies the allegations of paragraphs 5, 6, 8, 9, and all of the allegations contained in paragraph 10 as amended, and all sub-parts thereof.

(E) Defendant is without knowledge as to the allegations of plaintiff's Complaint regarding retention of legal services, but denies that plaintiff's counsel is entitled to the attorneys' fees claimed.

(F) Defendant denies each and every allegation of the plaintiff's Complaint not hereinabove specifically admitted.

AFFIRMATIVE DEFENSES

The loan made by the defendant Bank to plaintiff was made under terms and at an interest rate which falls within that exception to the Florida Interest and Usury Law provided for Industrial Savings Banks and Morris Plan Banks, F.S. 656.011 et seq, in that (a) the loan covers personal chattels and a real estate mortgage as provided in F.S. 656.17(1) and (5), respectively, and (b) the interest rate does not exceed a discount of eight (8%) percent per annum on the amount of the loan from its inception to date of maturity of the final installment. Such discount of eight (8%) percent would yield an annual percentage rate in excess of 14.13%, while the plaintiff's annual percentage rate is 11% as reflected on the face of the promissory note. In the same manner, all loans made by THE SECOND NATIONAL BANK OF NORTH MIAMI to the members of the purported class, fall within one or another of such exceptions recognized under F.S. 687.031 and which exceptions are detailed in the defendant's "Memorandum on Statutory Exceptions to the Florida Interest and Usury Law", the contents of which Memorandum are incorporated into these Affirmative Defenses by reference.

WHEREFORE, defendant prays that the plaintiff's Complaint be dismissed at the cost of the plaintiff both as to the individual and class aspect claims of such Complaint.

* * *

EXHIBIT "E"

[Title Omitted]

AVOIDANCE OF AFFIRMATIVE DEFENSE

COMES NOW the Plaintiff, by and through her counsel undersigned, and files this her Avoidance of the Affirmative Defenses filed by the Defendant Bank and shows this Court as follows:

1) The Defendant Bank pleads as an affirmative defense that the loan made by the Plaintiff falls within an exception to the Florida Usury Law provided by F.S. 656.011 et seq. for loans made by Industrial Savings Banks and Morris Plan Banks. The Bank further asserts that this is an exception recognized under the general Usury Statute, Florida Statutes 687.031. The Bank further asserts that as respects loans made by other members of the class in this case, they all fall within the exception cited or other similar exceptions.

2) The exception provided in Florida Statute Chapter 656 and particularly Florida Statute 656.17(1) does, in fact, constitute a special exception for Industrial Savings Banks and Morris Plan Banks as defined in that chapter and does, in fact, come within the purview of Florida Statute 687.031 which provides as follows:

> "Sections 687.02 and 687.03 shall not be construed to repeal, modify or limit any or either of the special provisions of existing statutory law creating exceptions to the general law governing interest and usury (chapter 687) and specifying the interest rates and charges which may be made pursuant to such exceptions which relate to banks, Morris Plan Banks, discount consumer financing, small loan companies and domestic building and loan associations."

The exception for Industrial Savings Banks and Morris Plan Banks above cited is a special exception and a special law. In like manner, each of the other exceptions relied upon by the Defendant Bank, as respects other members of the class, is a special exception and special law.

3) The constitution of the State of Florida, as adopted in 1968, provides in Article III, §11 as follows in pertinent part:

> "a) There shall be no special law or general law of local application pertaining to: (9) creation, enforcement, extension or impairment of liens based on private contracts, or fixing of interest rates on private contracts;"

4) Article XII of that constitution, §6 provides in pertinent part:

> "(a) All laws in effect upon the adoption of this revision, to the extent not inconsistent with it, shall remain in force until they expire by their terms or are repealed."

5) It is clear that the special laws relied upon by the Defendant Bank are unconstitutional and invalid and can afford the Bank no defense. In this connection, we adopt in full the argument made by the Plaintiff in her Memorandum in Opposition to Motion to Dismiss and in support of certification of cause as class action served May 22, 1975, and filed in this cause and particularly the argument made in subsection II thereof.

* * *

EXHIBIT "F"

[Title Omitted]

ORDER DETERMINING CONSTITUTIONALITY OF STATUTE AND DENYING MAINTENANCE OF CLASS ACTION

[Filed October 22, 1975]

This cause came on for hearing before the Court on July 10, 1975 for the purpose of determining whether this action may appropriately be maintained as a class action. At such hearing, this Court observed, inasmuch as the defensive position of THE SECOND NATIONAL BANK OF NORTH MIAMI, hereinafter referred to as the "BANK", involved the operation of Florida Statute §687.031 and the exceptions to the Florida general law governing interest and usury noted in Florida Statute §687.031, that it would be desirable to determine the constitutionality of such Florida statute and the statutory exceptions noted therein. For this purpose, the Court proposed, pursuant to Title 28 U.S. Code §2281, that the matter be heard and determined by a District Court of three judges under §2284 of Title 28 U.S. Code.

Pursuant thereto, this Court, as required by §2284 of Title 28 U.S. Code, notified the Chief Judge of the Fifth Circuit Court of Appeals requesting the composition of a three-judge District Court. Following consideration of this matter, the Fifth Circuit Court of Appeals has now notified this Court that it declines to appoint a three-judge District Court in this matter, and has returned this matter for consideration and determination by the undersigned District Judge.

This Court having considered the pleadings, affidavits, depositions, authorities and arguments made and submitted by the respective parties, enters this order.

NATURE OF ACTION

On January 23, 1975 the BANK filed a complaint in the Circuit Court of the 11th Judicial District in and for Dade County, Florida, Case No. 75-2421, seeking to foreclose upon a note and mortgage given to it by ANN M. CESARY, a/k/a ANN M. JOHNSON, hereinafter referred to "CESARY".

Thereafter this action was instituted by CESARY against the BANK in the United States District Court for the Southern District of Florida, Miami Division, Case No. 75-654-CIV-WM seeking to maintain an individual and class action complaint for debt and recovery of usurious interest allegedly charged by the BANK to CESARY and the purported class which the plaintiff sought to represent, comprising "Those individuals who have borrowed less than $500,000.00 from the Defendant Bank and who have paid interest thereon within a period of two (2) years last past the date of filing this action where interest has been charged by the Bank on such loans in excess of ten percent (10%) per annum".

To this, the BANK has responded by filing its answer and affirmative defenses denying that usurious interest was charged to the plaintiff and further asserting that all of the loans made by the BANK to members of the purported class fall within one or another of the exceptions recognized under Florida Statute §687.031 which allow for the charging of interest in excess of ten percent (10%) simple interest per annum, under the conditions set forth in such statutory exceptions. Among the statutes referred

to by Florida Statute §687.031 as exceptions to the general Florida interest and usury law are statutes providing for industrial savings banks and Morris plan banks, Florida Statute §656.011 and the BANK asserts that the loan which the BANK made to CESARY was made pursuant to such statute which allows for interest to be charged up to a rate of eight percent (8%) discount per annum which correspondends to an annual percentage rate in excess of 14.13 percent (14.13%).

The BANK further maintained that as a national bank it may charge interest at the maximum rate permitted by the state law to any competing state chartered or licensed institution, and therefore was permitted to charge interest pursuant to the exceptions to the general law governing interest and usury for the State of Florida as noted in Florida Statute §687.031.

In opposition to the maintenance of this action as a class action, the BANK submitted affidavits and the deposition of SAM HENRY, Vice-President of the BANK, to the effect that the BANK makes not one but many different kinds and categories of loans, with each kind of category of loan requiring the use of different forms or different combinations of forms, and that the interest rates, rights and obligations of the borrower and the BANK differ from one category of loan to the other.

FINDINGS

After due consideration of the pleadings, affidavits, memoranda, arguments and authorities relied upon by the parties, the Court finds that:

(a) That the State of Florida provides by statute for exceptions to the general Florida law governing interest

and usury under Chapter 687 Florida Statutes. These exceptions are noted in Florida Statute §687.031 which provides that the definition of usurious contracts and unlawful rates of interest set forth in Florida Statute §§687.02 and 687.03:

> ". . . shall not be contrued to repeal, modify or limit any or either of the special provisions of existing statutory law creating exceptions to the general law governing interest and usuary (chapter 687) and specifying the interest rates and charges which may be made pursuant to such exceptions, including but not limited to those exceptions which relate to banks, Morris plan banks, discount consumer financing, small loan companies and domestic building and loan associations."

(b) The United States Comptroller of the Currency has by Interpretive Ruling 7.7310 stated that a national bank may charge interest at the maximum rate permitted by state law to any competing state chartered or licensed lending institution. This ruling has been followed by the courts Northway Lanes vs. Hackley Union National Bank And Trust Company 334 F.Supp 723 (1971) Affirmed 464 F.2d 855 (1972) and Commissioner Of Small Loans vs. First National Bank 300 A.2d 685 (Ct of Appeals, Maryland, March 1, 1973).

(c) The statutory exceptions to the Florida interest and usury law noted in Florida Statute §687.031 are not special laws in the prohibited constitutional sense in that they have uniform operation throughout the State of Florida. A special law is one designed to operate on particular persons or things or one that operates upon classified persons or things, when classification is not permissible or the classification adopted is illegal. A general law is one relating to subjects or persons based upon proper distinctions and differences that adhere in or are peculiar or appropriate to such subject or persons. Laws based upon proper classifications may be general laws even though limited to a part of the people. Wide discretion is granted to the legislature in resorting to classification. The burden of showing that the classification provided for does not rest upon any reasonable basis, but is essentially arbitrary, is the burden of the party attacking the classification in the statute. Anderson vs. Board Of Public Instruction 136 So. 334, State Exrel. Anderson vs. Harris 163 So. 237. Uniformity of operation of a statute as required by the Florida Constitution does not require universality of operation, Lykes Bros. vs. Bigby 155 Fla. 580, but rather reasonable classification as to subject matter. Cates vs. Heffernan 18 So.2d 11.

This Court is not able on the basis of its judicial knowledge to determine that the grounds justifying the particular classifications and distinctions created by the Florida legislature for the exceptions to the general law governing interest and usury are unreasonable, and there is no substantial basis for holding Florida Statute 687.031 and the exceptions noted therein unconstitutional.

(d) In this connection, it is persuasive to note that the statutory exceptions to the Florida interest and usury law are claimed by CESARY to be unconstitutional by virtue of paragraph 9 of Article III, Section 11 of the 1968 Florida Constitution. These statutory exceptions to the Florida interest and usury law preceded paragraph 9 in time, and was it the intention of the Florida Legislature by the insertion of the new paragraph 9 into Article III, Section 11, to eliminate the already along existing statutory exceptions to the Florida interest and usury law, ample opportunity was available to the legislature for

this purpose. Instead, the Florida legislature during the years 1969 and thereafter, has on a number of occasions amended the Retail Installment Sales Act, the Industrial Savings Bank Act, The Home Improvement Sales and Finance Act and the act regulating credit unions, and by the laws of 1973 added the Florida Consumer Finance Act. These are among the exceptions contemplated by Florida Statute §687.031.

(e) Unless it can be said of the statute in question, that it positively and certainly is opposed to the Florida Constitution, this Court may not annul such statute as contrary to the Constitution. Greater Loretta Improvement Association vs. State 234 So.2d 655.

(f) With relation to the motion of CESARY to declare this action maintainable as a class action, this Court finds that the loans to the members of the purported class comprise different categories of loans, with each class or category requiring the use of different forms or different combinations of forms, and that even such forms were subject to variation based upon the requirements of the BANK and borrower in each specific transaction of loan. These different categories of loans, as well as the tailoring of each loan transaction to the needs of the particular borrower and to the BANK, result in questions of fact regarding one loan transaction not being common to the other loan transactions, so that individual questions would predominate over questions common to the proposed class. Whether the interest charge on a particular loan contract was usurious would, therefore, have to be determined borrower by borrower, contract by contract. Graybiel vs. American Savings And Loan Association 59 F.R.D. 7 (D.C.D.C. 1973). The category of loan in each transaction would likewise have to be determined, so as to ascertain

under which, if any, of the exceptions to the general law governing interest and usury the particular transaction would come. Determination of usury would then have to be made in accordance with the varying requirements of the individual statutory exceptions relative to each such loan.

CONCLUSIONS

Based upon the above findings, the Court concludes and hereby orders that:

1. Florida Statute §687.031 and the special provisions of existing statutory law creating exceptions to the general law governing interest and usury which exceptions are referred to in or within the scope of Florida Statute §687.031, are constitutional.

2. The motion of the plaintiff, CESARY, to maintain this action as a class action, is hereby denied.

Dated at Miami, Florida, this 22 day of October 1975.

W. O. Mehrtens
United States District Judge

EXHIBIT "G"

[Title Omitted]

ORDER OF SUMMARY JUDGMENT

[Filed December 22, 1975]

This cause came before the Court upon a Motion For Summary Judgment with supporting affidavits submitted by the defendant, The Second National Bank Of North Miami. Plaintiff has not filed a response to the defendant's motion.

This action commenced with the filing of plaintiff's complaint seeking to maintain an individual and class action against the defendant bank alleging that the bank had extracted a usurious rate of interest from the plaintiff and others by obtaining a rate of interest in excess of ten percent simple interest per annum.

The bank defended its position by asserting that the loans made by the defendant bank to the plaintiff and others were made under terms and at interest rates falling within the exceptions to the general law governing interest in usury in the State of Florida, which exceptions are referred to in Florida Statute §687.031. Thereafter, and while the initial pleadings of the plaintiff took no cognizance of any existing Florida Statutes creating exceptions to the general law governing interest and usury, or of the bank's right to have such law applied to it, the plaintiff, subject only to the question of constitutionality, conceded that:

1. Such laws do exist which constitute exceptions to the general law governing interest and usury in Florida, as referred to in Florida Statute §687.031, including the Retail Installment Sales Act (Florida Statute §520.30-

520.42) and the Industrial Savings Bank Act (Florida Statute §656.011-656.53); and

2. That under the provisions of the National Bank Act, the Second National Bank Of North Miami may charge interest at rates permitted by Florida law to any State chartered or licnesed lending institution, pursuant to such statutes.

However, it was the position of the plaintiff that Florida Statute §687.031 was unconstitutional in the light of Article III, §11(a)(9) of the 1968 Constitution of the State of Florida.

At the hearing held before this Court on July 10, 1975, pursuant to Local Rule 19 and Rule 23 of the Federal Rules of Civil Procedure, for the purpose of determining whether the action might appropriately be maintained as a class action, counsel for plaintiff orally acknowledged before this Court that, if Florida Statute §687.031 and the exceptions to the Florida general law governing interest and usury referred to in such statute, were determined to be constitutional, then the bank, under such exceptions, was entitled to charge interest in excess of ten percent simple interest per annum, and neither the plaintiff nor the other members of the purported class could maintain a cause of action against the bank.

Subsequently, on October 22, 1975, this Court entered its Order upholding the constitutionality of Florida Statute §687.031 and the special provisions of existing statutory law creating exceptions to the general law governing interest and usury referred to therein, and further denying the maintenance of this cause as a class action. Such order has not been the subject of a motion for rehearing or of an appeal by the plaintiff.

All relevant questions of law have been determined in favor of the defendant, and there remains only for determination by this Court the factual questions of whether the loan made by The Second National Bank of North Miami to the plaintiff, Cesary, falls within one or another of the exceptions to the Florida general law governing interest and usury.

In this respect, the plaintiff has attached Exhibit "A", a promissory note dated March 29, 1972, to the complaint. The note reflects an annual percentage rate of 11.00 percent and payments to be made over a five-year period. It also provides for securing of the loan by the granting to the bank of a security interest in a mobile home, an automobile and additional collateral in the form of a mortgage deed on real property described in the document.

Under Florida Statute §656.16(1), Morris Plan Banks and Industrial Savings Banks have the right to lend money upon the security of co-makers, personal chattels or other property and ". . . to take, receive, reserve and charge for such loans or discounts made or upon any notes, bills of exchange or other evidences of indebtedness, a discount not to exceed eight percent per annum upon the total amount of the loan from the date thereof until the maturity of the final installment, notwithstanding that the principal amount of such loan is required to be repaid in installments, plus an additional charge not to exceed two percent of the principal amount of any loan, which additional charge shall be for investigating the character of the individual applying for the loan, the securities submitted and all the costs in connection with the making of such loans, all of which charges and discounts may be collected at the time the loan is made."

It should be noted that the discount method of computing interest rates as provided under Chapter 656 of the Florida Statutes for Industrial Savings Banks will allow for a slightly higher annual percentage rate for a given simple interest rate than will the add-on interest method of computation. However, even if we take eight percent add-on interest as being the maximum allowable under the Industrial Savings Bank Act, given the five-year term of the Cesary loan, this yields a corresponding annual percentage rate of 14.13 percent even without reference to the additional charge not to exceed two percent of the principal amount of the loan for credit investigation as permitted under Florida Statute §656.17(1).

Since the annual percentage rate of the Cesary loan, as reflected on the face of plaintiff's Exhibit "A", is only 11.00 percent, it is evident that the interest rate charged to Cesary was well within the allowable eight percent discount rate provided for under the Industrial Savings Bank Act. Indeed, the simple interest rate for a five-year period corresponding to the 11.00 percent annual percentage rate charged to Cesary would be 6.09 percent. That is, to arrive at the 11.00 percent annual percentage rate, Cesary was charged only 6.09 percent add-on interest. This is obviously below the allowable eight percent discount rate.

Accordingly, the interest rate charged to Cesary by the defendant was not usurious under the laws of the State of Florida, which laws are made applicable to national banks under 12 U.S.C. §85, supplemented by Ruling 7.7310 of the United States Comptroller of the Currency. In accordance with such ruling are the cases of Northway Lanes v. Hackley Union National Bank And Trust Company, 334 F.Supp. 723 (W.D. Mich. 1971), aff'd 464 F.2d 855

(6th Cir. 1972) and Commissioner of Small Loans v. First National Bank, 300 A.2d 685 (Court of Appeals, Maryland, 1973).

For these reasons, the Court finds that the loan to plaintiff by the Second National Bank of North Miami is not usurious, and further finds that judgment should be entered in favor of defendant as a matter of law. It is, then,

ORDERED and ADJUDGED that summary judgment be and the same hereby is entered in favor of defendant and against plaintiff, who takes nothing, and this cause is hereby DISMISSED.

DONE and ORDERED at Miami, Florida, this 22nd day of December, 1975.

/s/ W. O. Mehrtens
Senior United States District Judge

cc: Shalle S. Fine; Sheldon Rosenberg; Michael Colodny.

EXHIBIT "H"

[Title Omitted]

ORDER DENYING CROSS MOTION FOR SUMMARY JUDGMENT OR ALTERNATIVE RELIEF AND DENYING MOTION FOR NEW TRIAL OR REHEARING

[Filed December 31, 1975]

This cause came before the Court upon the plaintiff's Motion For Summary Judgment Or Alternative Relief. It appears to the Court that the recent Order granting summary judgment in favor of defendant disposes of several issues raised by plaintiff in her cross motion. The question of the constitutionality of Florida Statute §687.031 and the statutes creating exceptions to the state general usury statute was extensively briefed by both parties in memoranda submitted in regard to defendant's motion on this issue. This Court requested a three judge panel as a matter of course and not because the Court believed that the constitutional issue presented was substantial. The chief judge for the Fifth Circuit Court of Appeals declined the request for appointment of a three judge panel to dispose of the constitutional question. The refusal to appoint a panel indicates that he regarded the issue as lacking in sufficient substance to warrant consideration by a three judge court.

The defendant filed its motion for summary judgment on December 4, 1975. Plaintiff did not respond to the motion within the time period specified in Local Rule 10(J). This Court permitted plaintiff additional time beyond the ten-day period before entering its ruling on the motion for summary judgment on December 22, 1975. Finally, on December 29, 1975, plaintiff submitted the cross motion which is the subject of this Order. Having failed

to comply with the timeliness requirements of this Court, especially in view of the leniency exercised by the Court in this instance, plaintiff cannot now complain that she did not have an opportunity to argue the unreasonableness of the classifications set forth in those statutes which provide exceptions to the general usury law in Florida.

Nonetheless, the Court has reconsidered its ruling to the extent that it has reviewed that portion of plaintiff's memorandum in support of the cross motion which pertains to the constitutionality of Florida Statute §687.031 and the exceptions permitted thereunder. Having examined plaintiff's argument together with memoranda previously filed on this subject, the Court reaffirms its Order granting summary judgment in favor of defendant.

Plaintiff does little more than set forth the slight disparity in the various exceptions to the general usury statute. The Court has examined these exceptions and the legislative history behind them, finding that the exceptions are not special laws prohibited by paragraph 9 of Section 11, Article III, of the 1968 Florida Constitution. Indeed, since 1968 the legislature has amended and expanded these exceptions. In accordance with the foregoing, it is

ORDERED and ADJUDGED that plaintiff's motions for summary judgment and other relief and for new trial or rehearing be and the same hereby are DENIED.

DONE and ORDERED at Miami, Florida, this 31st day of December, 1975.

/s/ W. O. Mehrtens
Senior United States District Judge

cc: Shalle S. Fine; Sheldon Rosenberg; Michael Colodny.

EXHIBIT "I"

SUPREME COURT OF FLORIDA

No. 53,497

ANN M. CESARY, Appellant,

vs.

THE SECOND NATIONAL BANK OF NORTH MIAMI, Appellee.

[February 1, 1979]

ALDERMAN, J.

This cause is before us for consideration of the following questions certified to us by the United States Court of Appeals for the Fifth Circuit pursuant to rule 4.61, Florida Appellate Rules:

1. Does Section 656.17(1), which sets the allowable interest rate for Morris Plan banks and industrial savings banks, violate Article III, Section 11(a)(9), Florida Constitution?
2. Do the special provisions of existing statutory law referred to in Section 687.031, which creates statutory exceptions to the general law of Florida governing interest and usury, violate Article III, Section 11(a)(9), as being special laws fixing interest rates on private contracts?

We answer both questions negatively and hold that neither section 656.17(1)[1] nor section 687.031,[2] Florida Statutes (1975), violates article III, section 11(a)(9), Florida Constitution.

Ann Cesary brought a suit against The Second National Bank of North Miami in her own behalf and on behalf of those individuals who have borrowed less than $500,000 from the Bank who have paid interest thereon within a period of two years last past the date of filing

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1. Section 656.17(1) provides:

LOANS; SECURITY REQUIRED, INTEREST AND CHARGES.—The right to lend money upon the security of comakers, personal chattels, or other property and to take, receive, reserve, and charge for such loans or discounts made or upon any notes, bills of exchange, or other evidences of debt, a discount not to exceed 8 percent per annum upon the total amount of the loan from the date thereof until the maturity of the final installment, notwithstanding that the principal amount of such loan is required to be repaid in installments, plus an additional charge not to exceed 2 percent of the principal amount of any loan, which additional charge shall be for investigating the character of the individual applying for the loan, the security submitted and all other costs in connection with the making of such loans, all which charges and discounts may be collected at the time the loan is made. No other charge of any kind or nature whatsoever by whatsoever purpose or name designated, shall be made; provided, however, that when a loan is of such character as to necessitate the filing or recording of a legal instrument, an additional charge may be made for such filing or recording, providing such charge is actually paid to the proper public officials; also borrower may be required to pay abstract costs, reasonable attorney's fees, documentary stamp taxes, other taxes, premiums on insurance, and other similar charges, if the bank deems the same necessary for the protection and security of said loan.

2. Section 687.031 provides:

Construction, ss. 687.02 and 687.03.—Sections 687.02 and 687.03 shall not be construed to repeal, modify or limit any or either of the special provisions of existing statutory law creating exceptions to the general law governing interest and usury and specifying the interest rates and charges which may be made pursuant to such exceptions, including but not limited to those exceptions which relate to banks, Morris Plan banks, discount consumer financing, small loan companies and domestic building and loan associations.

this action where interest has been charged in excess of ten percent per annum. Cesary borrowed $8,800.44 from the Bank, evidenced by a promissory note dated March 29, 1972, which on its face provides for an interest rate of eleven percent per annum. Under the provisions of 12 U.S.C. § 86 (1945), the Bank was entitled to receive interest at the maximum rate allowed by Florida law. Cesary contended that under the Florida usury statute, the note was usurious on its face. The Bank defended the action on the basis of section 687.031, Florida Statutes, which allows the charging of interest in excess of ten percent for loans arising under one or more statutory exceptions outlined elsewhere in the Florida Statutes. The Bank argued that its loan fits into the exception provided in section 656.17(1) for industrial savings banks and Morris Plan banks, and that since the exception permits a 14.3 annual percentage rate, the eleven percent rate charged Cesary was not usurious. Cesary did not contest that the loans fall into the exception created by sections 656.17 (1) and 687.031. Rather, she contended that these two statutory provisions are special laws prohibited by article III, section 11(a)(9), Florida Constitution, which provides:

> (a) There shall be no special law or general law of local application pertaining to:
>
> . . .
>
> (9) creation, enforcement, extension or impairment of liens based on private contracts, or fixing of interest rates on private contracts . . .

Holding these two statutes constitutional, the United States District Court for the Southern District of Florida entered summary judgment for the Bank. That court said:

> The statutory exceptions to the Florida interest and usury law noted in Florida Statute §687.031 are

not special laws in the prohibited constitutional sense in that they have uniform operation throughout the State of Florida. A special law is one designed to operate on particular persons or things or one that operates upon classified persons or things, when classification is not permissible or the classification adopted is illegal. A general law is one relating to subjects or persons based upon proper distinctions and differences that adhere in or are peculiar or appropriate to such subject or persons. Laws based upon proper classifications may be general laws even though limited to a part of the people. Wide discretion is granted to the legislature in resorting to classification. The burden of showing that the classification provided for does not rest upon any reasonable basis, but is essentially arbitrary, is the burden of the party attacking the classification in the statute. Anderson vs. Board of Public Instruction, 136 So. 334, State ex rel. Anderson vs. Harris, 163 So. 237. Uniformity of operation of a statute as required by the Florida Constitution does not require universality of operation, Lykes Bros. vs. Bigby, 155 Fla. 580, but rather reasonable classification as to subject matter. Cates vs. Heffernan, 18 So.2d 11.

This Court is not able on the basis of its judicial knowledge to determine that the grounds justifying the particular classifications and distinctions created by the Florida legislature for the exceptions to the general law governing interest and usury are unreasonable, and there is no substantial basis for holding Florida Statute 687.031 and the exceptions noted therein unconstitutional.

No. 75-654 (S.D. Fla. Order Determining Constitutionality, Oct. 22, 1975).

Cesary appealed to the United States Circuit Court, Fifth Circuit, which in turn has certified to us the questions regarding the constitutionality of these statutes.

Cesary argues that the exceptions to the Florida usury statute are special laws in violation of article III, section 11(a)(9), because they benefit special groups, the lenders who operate under the exception, and that, therefore, the loan obtained by her from the Bank was usurious. She states that the purpose of the usury law is to protect the borrower from unconscionable lenders and the validity of the classification created by the challenged statutes should be tested in light of this purpose. Analyzing the amount of interest which may be charged by various lenders including small loan companies, credit unions, industrial savings, and savings associations under the general statutory scheme, she submits that the amount of interest permitted to be charged for the same amount of loan depends upon who the lender is and not upon the character of the borrower, the amount of loan, or security pledged. She contends that this statutory scheme has as its purpose the benefit of certain lenders and not the protection of the borrower and that these exceptions are simply special laws. She asserts that the legislature can classify by the type of borrower, type of loan, or amount of loan but cannot constitutionally classify according to the type of lender.

In response, The Second National Bank argues that these statutory exceptions are not special laws in the prohibited constitutional sense since they operate uniformly throughout the State of Florida. It contends that this state has for years permitted banks and other regulated lenders to charge interest on smaller loans at rates greater than ten percent per annum. Relying on the following definition of special law: "A statute which relates to per-

sons or things as a class is a general law, while a statute which relates to particular persons or things of a class is special," it contends that the laws in question are general laws. Reciting that this Court has long recognized the authority of the legislature to create different classifications of lenders, rates, and limits in regulating usury, it states that the legislature has reasonably classified regulated lenders and that Cesary has failed to carry her burden of proof to show otherwise. It maintains that different types of credit transactions involve different types of risks and different costs, that small loans involve greater risk and cost than commercial loans to an established business, that revolving charge accounts of credit card plans involve more risk than a loan of $20,000 to a bank's regular customer. It submits that the subject legislation is a valid and constitutional balancing of the need for reasonable, convenient credit, the need to protect the borrower, costs of credit arrangements, the risk of nonpayment, the nature of the lender's business, and the extent of existing government regulation.

We concur with the rationale of the trial court and agree with Second National Bank that the classifications created by the legislature through enactment of sections 687.031 and 656.17(1) are reasonable and that these laws are general laws which operate uniformly throughout the state upon these classifications.

Although there is no definition of general or special law in the constitution,[3] this Court in *Bloxham* v. *Florida Central & Peninsular Railroad*, 35 Fla. 625, 732-3, 27 So. 902, 924-25 (1895), explained what is meant by special law as used in the context of article III, section 11, as follows:

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3. Article X, section 12(g), Florida Constitution, merely provides: " 'Special law' means a special or local law."

> "A statute which relates to persons or things as a class is a general law, while a statute which relates to particular persons or things of a class is special, and comes within the constitutional prohibition." It might be that the railroad of the complainant is the only property affected by the act. Such a state of affairs would not make it a special law. Speaking upon a similar contention, this court has also quoted with approval, in the case of Ex parte Wells, supra, from the supreme court of New Jersey, the following language: "A law so framed [i.e. general in its terms] is not a special or local law, but a general law, without regard to the consideration that within the state there happens to be but one individual of the class, or one place where it produces effects." It has also been said, as applied to statutes, that the word "general," as distinguished from "special," means all of a class, instead of part of a class. 23 Am. & Eng. Enc. Law, p. 148, and authorities cited. In the case of McAunich v. Railroad Co., 20 Iowa 338, it is said, speaking of statutes of this character: "These laws are general and uniform, not because they operate upon every person in the state, for they do not, but because every person who is brought within the relations and circumstances provided for is affected by the law. They are general and uniform in their operation upon all persons in the like situation, and the fact of their being general and uniform is not affected by the number of persons within the scope of their operation."

The uniformity of operation throughout the state required by this constitutional provision does not mean universality of operation over the state. Reasonable classification as to subject matter is permitted. *Cates* v. *Heffernan*,

154 Fla. 422, 18 So.2d 11 (1944). Justice Terrell in *Cantwell* v. *St. Petersburg Port Authority*, 155 Fla. 651, 653, 21 So.2d 139, 140 (1945), explained:

> A law does not have to be universal in application to be a general law. Laws relating to the location of the capital of the state, the state university, the state prison farm, the hospital for the insane and other state institutions are local in character but general in application and are regarded as general laws. The act under consideration is easily within this class.

"Classification" is the grouping of things because they agree with one another in certain particulars and differ from other things in those same particulars. *Anderson* v. *Board of Public Instruction*, 102 Fla. 695, 136 So. 334 (1931). This Court has ofttimes recognized the wide discretion of the legislature in formulating classifications when establishing regulations for the public welfare but has also acknowledged that statutory classifications must be reasonable and must be based upon some difference bearing a reasonable and just relationship to the subject matter regulated. *Carter* v. *Norman*, 38 So.2d 30 (Fla. 1948); *State ex rel. White* v. *Foley*, 132 Fla. 595, 182 So. 195 (1938). A statute which relates to subjects, persons, or things as a class, based upon proper differences which are inherent in or peculiar to the class, is a general law. *State ex rel. Gray* v. *Stoutamire*, 131 Fla. 698, 179 So. 730 (1938).

The determination of the maximum amount of interest which may be charged for the use of money loaned is within the police power of the state, and the details of the legislation and exceptions to be made rest within discretion of the state legislature. *Griffith* v. *Connecticut*, 218 U.S. 563 (1910). When dealing with usury questions and classifications established by the legislature relating thereto, the legislature has a great deal of discretion, and its classifications will not be disturbed unless clearly unconstitutional. *Edwards* v. *State*, 62 Fla. 40, 56 So. 401 (1911). The legislature enacted the usury laws to remedy an existing evil, and it has the authority to classify regulatory enactments with reference to degrees of evil. *Beasley* v. *Cahoon*, 109 Fla. 106, 147 So. 288 (1933).

A party who challenges the classification of a statute has the burden of proving that the classification therein does not rest upon any reasonable basis and is therefore arbitrary. *Anderson* v. *Board of Public Instruction, supra.* Cesary failed to show that the grounds justifying the particular classifications created by the legislature for exceptions to the general law governing interest and usury are unreasonable.

The classifications of lenders created by sections 687.031 and 656.17(1) have a basis in real differences of conditions affecting the subject matter regulated. In establishing these classifications, the legislature considered the need for convenient, reasonable credit for as broad a group of borrowers as possible; the need to protect necessitous borrowers from overreaching "loanshark" type lenders; the costs of different credit arrangements, including substantial bookkeeping and computer costs involved in smaller loans; the risk of nonpayment; the nature of the lender's business and the degree of existing government regulation of that business; and the nature and needs of the borrower. For each classification of lender, the legislature has established a particularized regulatory procedure relating not only to the allowable interest rates but also to the type of security which may be taken, the length of terms over which repayment can be made, the charges and costs which may be assessed, and the penalties to be imposed if any of the regulatory provisions are violated.

Accordingly, we answer the certified questions in the negative. Neither section 656.17(1) nor section 687.031 violates article III, section 11(a)(9), Florida Constitution.

ENGLAND, C.J., ADKINS, BOYD, OVERTON, SUNDBERG and HATCHETT, JJ.,

Concur

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

Certified Question from the United States Court of Appeals, Fifth Circuit—Case No. 76-1515

Shalle Stephen Fine, Steven Brownstein and Milton Feller of Fine and Brownstein, Miami, Florida; and Marion E. Sibley of Sibley, Giblin, Levenson and Glaser, Miami Beach, Florida,

for Appellant

Sheldon Rosenberg of Ress, Gomez, Rosenberg, Berke and Howland, North Miami, Florida; and Jerry B. Crockett and Joseph P. Klock, Jr. of Steel, Hector and Davis, Miami, Florida,

for Appellee

Jim Smith, Attorney General; and Susan E. Mole, Assistant Attorney General, Tallahassee, Florida, for the State of Florida,

Amicus Curiae

Donald T. Senterfitt and J. Thomas Cardwell of Akerman, Senterfitt and Eidson, Orlando, Florida, for Florida Bankers Association,

Amicus Curiae

Kenneth C. Howell of Thompson, Wadsworth, Messer, Turner and Rhodes, Tallahassee, Florida, for The Florida Consumer Finance Association,

Amicus Curiae